

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In The Matter of:

Altoona City Authority  
Westerly WWTP  
20 Greenwood Road  
Altoona, PA 16602,

Respondent.

Proceeding to Assess Class I  
Administrative Penalty Under  
Section 309(g) of the Clean  
Water Act

EPA Docket No. CWA-03-2010-0293

**ADMINISTRATIVE PENALTY COMPLAINT  
And NOTICE OF OPPORTUNITY  
TO REQUEST HEARING**

**I. STATUTORY AUTHORITY**

1. This Administrative Penalty Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A) ("CWA" or the "Act"). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has delegated it to the Director of the Water Protection Division.
2. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and in accordance with the enclosed *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22, Complainant hereby proposes to assess a civil penalty in the amount of twenty seven thousand dollars (\$27,000) against the Altoona City Authority ("Respondent") for violations of Section 301 of the CWA, 33 U.S.C. § 1311.
3. Pursuant to 40 C.F.R. § 22.14(a)(6), Respondent is hereby notified that the procedures set forth at 40 C.F.R. Subpart I (40 C.F.R. §§ 22.50-.52) apply to this proceeding.
4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122, or other specific authorization.

5. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."
6. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines "pollutant" to include, inter alia, sewage, sewage sludge, biological materials, and industrial, municipal and agricultural waste.
7. Section 502(12) of the Act, 33 U.S.C. § 1362(12) defines "discharge of a pollutant" to include any addition of any pollutant to navigable waters of the United States from any point source.
8. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure..."

## **II. FINDINGS OF FACT**

9. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
10. Respondent is the permittee for a wastewater treatment plant ("WWTP") located in Allegheny Township, Blair County, Pennsylvania, which discharges pollutants into Beaverdam Branch (hereinafter the "Westerly WWTP").
11. The Beaverdam Branch is a navigable water, and hence a "water of the United States" as set forth in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
12. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Pennsylvania Department of Environmental Protection ("PADEP" or "DEP") issued to Respondent NPDES Permit No. PA 0027022 for the Westerly WWTP (the "Westerly Permit"), on January 29, 2008, for the discharge of pollutants from the Westerly WWTP.
13. The Westerly Permit is set to expire on January 31, 2013.

## **III. FINDINGS OF VIOLATION**

### **Count I - Failure To Submit Reevaluation of Local Limits**

14. Part C, Section V(E) of the Westerly Permit requires, in pertinent part, that the Respondent "shall submit to EPA and DEP, a reevaluation of its local limits based on a headworks analysis of its treatment plant within one year of permit issuance."

15. Respondent's submission of its reevaluation of its local limits based on a headworks analysis of its Westerly WWTP was due January 29, 2009.
16. Respondent failed to submit to EPA and PADEP a reevaluation of its local limits based on a headworks analysis of its Westerly WWTP by January 29, 2009.
17. Respondent's failure to submit the reevaluation as required by the Westerly Permit is a violation of Part C, Section V(E) of the Westerly Permit, and Section 301 of the Act, 33 U.S.C. § 1311.
18. As of the date of this Complaint, Respondent has failed to submit to EPA and PADEP a reevaluation of its local limits based on a headworks analysis of its Westerly WWTP.
19. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations of the Act, such as these, which occurred subsequent to January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$16,000 per violation.

#### **Count II – Failure To Submit Sampling Plan**

20. Part C, Section V(E) of the Westerly Permit also requires, in pertinent part, that within three (3) months of permit issuance the Respondent shall submit to EPA and DEP the "list of pollutants to be evaluated, as well as a sampling plan for collection of necessary data...."
21. Respondent's sampling plan for collection of necessary data for the Westerly WWTP was due April 29, 2008.
22. Respondent failed to submit a sampling plan for collection of necessary data for the Westerly WWTP to EPA and PADEP by April 29, 2008.
23. Respondent's failure to submit the sampling plan for the Westerly WWTP as required is a violation of Part C, Section V(E) of the Westerly Permit, and Section 301 of the Act, 33 U.S.C. § 1311.
24. As of the date of this Complaint, Respondent has failed to submit to EPA and PADEP a sampling plan for its Westerly WWTP.
25. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation

Adjustment Rule, 40 C.F.R. Part 19, violations of the Act, such as these, which occurred between March 15, 2004 and January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$11,000 per violation.

#### **IV. PROPOSED CIVIL PENALTY**

26. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of **twenty-seven thousand dollars (\$27,000)**. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
27. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, Respondent's ability to pay, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations, all of which are factors identified at Section 309(g)(3) of the Clean Water Act, 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
28. The Regional Administrator or his delegatee may issue a Final Order Assessing Administrative Penalties after thirty (30) days and without further proceedings following Respondent's receipt of this Complaint, unless Respondent, within that time, either pays the penalty or responds to the allegations in the Complaint according to the terms of Section V, below.
29. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act, any other Federal or State laws, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

#### **V. ANSWER TO COMPLAINT AND OPPORTUNITY TO REQUEST HEARING**

30. Respondent must file an Answer to this Complaint; failure to file an Answer may result in entry of a Default Judgment against Respondent.
31. Upon issuance of a Default Judgment, the civil penalty proposed herein shall become due and payable.

32. Respondent's failure to fully pay the entire penalty, assessed by the Default Order, by the due date may result in a civil action to collect the assessed penalty, plus interest, attorneys' fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9).
33. In addition, the Default Penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.
34. Any Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly and directly state that the Respondent has no knowledge as to particular factual allegations in the Complaint.
35. The Answer shall also state the following:
  - a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
  - b. the specific facts that Respondent disputes;
  - c. Respondent's basis for opposing the proposed penalty; and
  - d. whether Respondent requests a hearing.

**Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.**

36. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
37. At the hearing, Respondent may contest any material fact contained in the Findings listed in Sections II and III, above, and the appropriateness of the amount of the proposed civil penalty in Section IV, above.
38. The procedures for hearings are set out in the Consolidated Rules.
39. Any Request for Hearing and Answer to this Complaint that Respondent wishes to file must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street

Philadelphia, PA 19103-2029

40. Copies of the Request for Hearing and the Answer, along with any and all other documents filed in this action, shall also be sent to the following:

Mr. Douglas Frankenthaler  
Assistant Regional Counsel (3RC20)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

#### **VI. SETTLEMENT CONFERENCE**

41. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act.
42. Whether or not a hearing is requested, Respondent may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.**
43. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his delegatee.
44. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.
45. If you wish to arrange a settlement conference, or if you have any questions related to this proceeding, please contact Douglas Frankenthaler, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, at (215) 814-2472 before the expiration of the thirty (30) day period following your receipt of this Complaint.
46. If you are represented by legal counsel, you must have your counsel contact Mr. Frankenthaler on your behalf.
47. Once again, however, **such a request for a settlement conference does not relieve the Respondent of the responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.**

## **VII. QUICK RESOLUTION**

48. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.
49. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.
50. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time (more than thirty (30) days) to pay the penalty, then pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days of receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1) but needs additional time in which to do so.
51. Such written statement need not contain any response to, or admission of, the allegations in the Complaint.
52. Such statement shall be filed with the following:  
Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
and a copy shall be provided to:  
Mr. Douglas Frankenthaler  
Assistant Regional Counsel (3RC20)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029
53. Upon filing such a written statement, Respondent will receive an additional thirty (30) days, for a total of sixty (60) days from the date of receiving this Complaint, in which to pay the full amount of the proposed penalty.
54. Failure to pay in full the proposed penalty within thirty (30) days of receipt of this Complaint, or within sixty (60) days of receipt of this Complaint should Respondent file a written statement with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.18(a)(2), may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

55. Payment of the penalty shall be made by one of the following methods and shall reference Respondent's name and address and the Docket Number of this action (*Docket No. CWA-03-2010-0293*):

a. Via certified check or cashier's check drawn on a bank with branches in the United States, made payable to "United States Treasury."

i. If sent via first-class mail, to:

U.S. Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Eric Volck 513-487-2105

ii. If sent via UPS, Federal Express, or Overnight Mail, to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: 314-418-1028

b. Via certified check or cashier's check in any currency drawn on a bank with no branches in the United States, made payable to "United States Treasury" and addressed for delivery to:

Cincinnati Finance  
U.S. EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

c. Via wire transfer, sent to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"



- d. Via electronic payment made through the ACH (Automated Clearing House), also known as Remittance Express (REX), directed to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706

Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Finance Center Contacts:  
John Schmid: 202-874-7026, or  
REX: 866-234-5681

- e. Via online payment option:

<https://www.pay.gov/paygov>

Enter sfo 1.1 in the search field. Open and complete the form for the Cincinnati Finance Center.

56. These payment instructions are also available online at:  
[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

57. At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

and to:

Mr. Douglas Frankenthaler  
Assistant Regional Counsel (3RC20)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

58. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment of the penalty by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

### **VIII. PUBLIC PARTICIPATION**

59. EPA is obligated, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to give members of the public notice of and an opportunity to comment on this proposed penalty assessment.
60. If Respondent requests a hearing on this proposed penalty assessment, members of the public who submitted timely comments on this proposed penalty assessment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to not only be notified of the hearing but also to be heard and to present evidence at the hearing on the appropriateness of this proposed penalty assessment.
61. If Respondent does not request a hearing, EPA may issue a Final Order Assessing Administrative Penalties, in which case those members of the public who submitted timely comments on this proposed penalty assessment will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

Date: 6/30/2010

*Victoria P. Brneth*  
for Jon M. Capacasa, Director  
Water Protection Division

NOTICE OF INTENT TO ASSESS  
ADMINISTRATIVE PENALTY  
AND  
OPPORTUNITY FOR PUBLIC COMMENT  
U.S. ENVIRONMENTAL PROTECTION AGENCY--REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

Date of Notice: [ 16-30-10 ]

Comment Period: Thirty (30) days from date of publication of notice

Action: Notice of Proposed Assessment of Clean Water Act Section 309(g) Class I Penalty and Opportunity to Comment

**NOTICE.** The U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") is hereby giving notice that it has issued an Administrative Penalty Complaint to Altoona City Authority, 20 Greenwood Road, Altoona, PA 16601-7114 ("Respondent") and notice of its intent to assess administrative penalties of **twenty seven thousand dollars (\$27,000)** under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g) for violation of its NPDES Permit No. PA 0027022 issued under the Clean Water Act. The following further identifies the case and should be included in any written comments submitted:

**Name of Case:** I/M/O Altoona City Authority  
Westerly WWTP

**20 Greenwood Road, Altoona, PA 16601-7114**

**Docket Number: CWA-03-2010-0293**

**Date Filed:** [ 16-30-10 ]

**OPPORTUNITY FOR COMMENT.** Section 309(g) of the Act, 33 U.S.C. § 1319(g) requires that interested persons be given notice of the proposed penalty and a reasonable opportunity to comment. Procedures by which the public may submit written comments or participate in the proceedings are described in the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, (Consolidated Rules), 40 C.F.R. Part 22. The deadline for submission of written public comments is thirty (30) days after issuance of this public notice. Comments should be made to:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

If Respondent requests a hearing within thirty (30) days of receiving the Administrative Complaint, those submitting written comments in response to this Notice will be advised of the time and date of the hearing and may appear to present evidence on the appropriateness of the proposed penalty.

If Respondent does not request a hearing within thirty (30) days of receiving the Administrative Complaint, should EPA issue a Final Order Assessing Administrative Penalties, those members of the public who submitted timely comments on this proposed penalty assessment will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon.

**FOR FURTHER INFORMATION.** Interested parties may contact the following EPA representatives to learn more about this action:

Mr. Ramon D. Albizu (3WP42)  
U.S. Environmental Protection  
Agency--Region III  
Environmental Scientist  
1650 Arch Street  
Philadelphia, PA 19103  
215/814-5779

Mr. Douglas Frankenthaler (3RC20)  
U.S. Environmental Protection  
Agency--Region III  
Assistant Regional Counsel  
1650 Arch Street  
Philadelphia, PA 19103  
215/814-2472

**CERTIFICATE OF SERVICE**

I certify that the enclosed Administrative Penalty Complaint with Notice of Opportunity to Request Hearing was delivered to the following persons:

Delivery by Certified Mail Return Receipt Requested:

Mr. Maurice Lawruk  
Chairman, Board of Directors  
Altoona City Authority  
122 Greenwood Road  
Altoona, PA 16602-7114

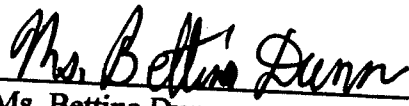
and

Mr. Mark Perry  
General Manager  
Altoona City Authority  
122 Greenwood Road  
Altoona, PA 16602-7114

And Delivery by hand (original and one copy):

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Date: 6-30-10

  
Ms. Bettina Dunn  
Paralegal, Office of Regional Counsel  
US EPA Region III

Enclosure

